IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP NO.9326 of 2006

DATE OF DECISION: December 7,2006

Lovnish Pandir

….Petitioner

VERSUS

Baba Farid University of Health Sciences, Faridkot and others

….

Respondents

CORAM:- HON'BLE MR. JUSTICE VINEY MITTAL
HON'BLE MR. JUSTICE H.S. BHALLA

PRESENT: Shri Rajiv Raina, Advocate for the petitioner.
Shri Ashish Rawal, Advocate for respondent No.1.
Shri Inderjit Kaushal, Advocate for respondent No.2.
Shri Sukhdip Singh Brar, Additional Advocate General, Punjab for respondent No.3.

Viney Mittal,J.

The petitioner has challenged the communication dated February 22, 2006 addressed by Baba Farid University of Health Sciences, Faridkot, respondent No.1 to the Principal, Desh Bhagat Dental College & Hospital, respondent No.2, whereby the University has held that the petitioner was not eligible for admission in BDS 1st year course. A copy of the aforesaid communication has been appended as Annexure P.9 with the present petition.

The petitioner passed his Senior Secondary +2 examination in science group from Himachal Pradesh Board of School Education. Thereafter, he appeared in Punjab Medical

Entrance Test, 2005 which was conducted by Baba Farid University of Health Sciences, Faridkot, respondent No.1 in pursuance to a notification dated April 25, 2005 issued by the State Government of Punjab for the admissions to MBBS/BDS/BAMS/BHMS Courses in various institutions. A subsequent notification was issued on May 20,2005. A copy of the notification dated May 20,2005 is Annexure P.3 on the record. Through the notification, Annexure P.3, it was provided that the fee structure for the private institutions would be decided by the Fee Fixation Committee. The inter-se ranking for admission under the sports category was also modified to some extent. The following paragraph was also inserted with regard to the left over seats of the management quota:

> "(1) The left over seats of managements quota in Ayurvedic, Homoeopathic and Dental College shall be transferred to the management quota if any candidate having qualified in PMET 2005 is not available after the counselling. The University shall send the list of all those candidates, who have appeared in PMET 2005 and who at 10+2 level have secured 50% marks (40% for SC/BC) in PCB subjects and have passed in English also. Their merit shall be determined on the priority and if such candidates also are not available then the management shall be free to admit other eligible candidates on the basis of 10+2 examination. But no admission shall be made after 30.9.2005, under any circumstances, whatsoever and the list of the admitted candidates shall be sent to the University, Director,

Research & Medical Education, Punjab and the Secretary, Govt. of Punjab, Research & Medical Education, Punjab and the Secretary, Govt. of Punjab, Department of medical Education & Research, Chandigarh."

The petitioner has pleaded that the application form submitted by the petitioner was accepted and he was allowed to appear in PMET test held on June 5, 2005. His result was declared and he was placed at rank No.8460. In pursuance to the admission process for the management quota seats conducted by respondent No.2, Desh Bhagat Dental College & Hospital, he applied for admission in BDS course in the said college. He also participated in the counselling held on September 30,2005 for left out quota seats. The petitioner was granted admission. The petitioner has pleaded that he deposited the admission fee and his name was sent to the respondent University for registration alongwith documents of other students. According to the petitioner, he continued to attend the classes alongwith the other students. However, through a communication Annexure P.9, the University has communicated to the College, respondent No.2 that since the petitioner was from outside the State of Punjab, therefore, he was not eligible for admission. However, the admission of 22 students, who were admitted alongwith the petitioner, has been approved. It is in these circumstances that the petitioner has approached this Court through the present petition.

The primary plea raised by the petitioner is that the notification, Annexure P.3, dated May 20,2005 had superseded the original notification, Annexure P.2 dated April 25, 2005 and as such the eligibility conditions contained in the original notification also stood superseded and in the new notification Annexure P.3 there was no requirement of a candidate having passed his 10+2 examination only from the State of Punjab. On that basis, the petitioner has pleaded that as per the new notification, Annexure P.3, the petitioner was fully eligible and was entitled to be registered. Additionally, a plea has been raised by the petitioner that since the petitioner had not made any mis-representation and had stated all the facts with regard to his having passed his +2 examination from Himachal Pradesh Board of School Education i.e. from outside the State of Punjab, therefore, the respondent University, at this stage, when the petitioner had already been admitted and had commenced his studies, was estopped from declaring the petitioner as ineligible and refusing to register him in BDS course.

Two separate written statements have been filed. In the written statement filed by respondent No.2 College, the claim of the petitioner has been conceded. It has been maintained that the petitioner was duly eligible under the amended notification Annexure P.3 and as such the original notification dated April 25, 2005 could not be considered to be operative qua the petitioner and for seats which were left over seats of management quota and stood transferred to the management quota.

However, in the written statement filed by the respondent University, the claim of the petitioner has been contested.

It has been maintained by the University that the eligibility conditions provided in the original notification dated April 25, 2005 were intact and operative and were to be complied with even while admitting the students in left over seats, as provided vide notification Annexure P.3 dated May 20,2005. The University has maintained that since the petitioner did not fall in any of the exempted categories of the original notification dated April 25,2005, therefore, he could not be treated to be eligible in any manner. The University has also maintained that respondent No.2, College had issued an advertisement dated September 30,2005 and the counselling was to be held on the aforesaid date itself i.e. on September 30,2005 itself and as such the University could not appoint and send its representatives to participate in the said counselling. In these circumstances, the College had sent a copy of the proceedings of the selection committee alongwith list of the selected candidates and it was thereafter that the University had found that certain ineligible candidates had been selected. Thus, the University has maintained that the petitioner could not claim that the University was estopped in any manner from challenging the eligibility of the petitioner.

We have heard the learned counsel for the parties and with their assistance have also gone through the record of the case.

It is not in dispute that as per the original notification dated April 25, 2005, Annexure P.2, the petitioner cannot be treated to be eligible for admission to BDS course on the basis of eligibility conditions provided therein for the seats in the State of Punjab. Concededly, he had passed his 10+2 examination from Himachal Pradesh Board of School Education. He is not covered by any of the

exemption clauses indicated in the notification Annexure P.2. In these circumstances, the only question which requires determination in the present case is as to whether the notification, Annexure P.3, can be treated to be in supersession of the earlier notification, Annexure P.2 and as to whether the said notification, Annexure P.3, can be held to be a complete code in itself or not?

The notification, Annexure P.3) starts with the following phrase:

> "In-partial modification of the Punjab Govt. Notification No.5/6/05-3HB III/1515 dated 25th April 2005 the Governor of Punjab is pleased to issue the following amendments:-"

It is, thus, clear that the said notification, Annexure P.3, is in partial modification of the earlier notification, Annexure P.2 and cannot be treated to have superseded the earlier notification. Only certain amendments have been carried out through the notification, Annexure P.3. One of the amendments is with regard to filling up of the left over seats. The said amendment has already been noticed above in the earlier portion of the judgment.

A perusal of the said amendment qua the manner in which the left over seats are to be filled up also shows that in case there are any left over seats of management quota, then the University shall send the list of all those candidates who had appeared in PMET 2005 and who at 10+2 had secured 50% marks in P.C.B. subject and had passed only also. The merit list of such candidates was to be determined on priority and it was only "**if such candidates also are not available, then the management shall be free to admit other**

eligible candidates on the basis of 10+2 examination." It is, thus, apparent that while providing for the amended mode for filling left over seats, the requirement of eligibility conditions have not been diluted, nor any change has been made therein. The eligibility conditions, as provided in the original notification, remain intact. The amended notification is to be treated as having diluted or amended the earlier notification only to the extent of the amendment made in the subsequent notification and by any stretch of imagination, the other provisions, which have not been amended/modified in any manner, cannot be treated to have been affected in any manner. The plea raised by the petitioner that the amended notification is a complete code in itself and does away with the eligibility conditions, as provided in the original notification, Annexure P.2, is wholly a mis-construction of the notification, Annexure P.3. We cannot subscribe to the said interpretation. As a matter of fact, the very opening words of the amendment notification, Annexure P.3, do not permit such an interpretation, as suggested by the petitioner.

The other plea raised by the petitioner with regard to estoppel against the University is also mis-conceived. The petitioner was admitted at the College level, without there being any acquiescence or participation by the University. The University at no point of time ever treated the petitioner as eligible. In such circumstances, it cannot be held that the University had at any point of time accepted the eligibility of the petitioner. There is no question of any estoppel against the University in this regard.

No other point has been urged.

Consequently, we do not find any merit in the present petition and the same is dismissed.

A copy of the order be given dasti on payment of charges for urgent copies.

(Viney Mittal)
Judge

December 7, 2006
KD

(H.S. Bhalla)
Judge